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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/354,177	12/12/94	CHILDRESS	B 41933

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EXAMINER

TRAN LIEN, T

ART UNIT	PAPER NUMBER
1761	40

DATE MAILED: 10/23/00

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 8/1/00

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-12, 14-31, 33-39, 41-43, 45-87 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-12, 14-31, 33-39, 41-43, 45-87 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of Reference Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

-- SEE OFFICE ACTION ON THE FOLLOWING PAGES --

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1. Upon further consideration, the indication of allowability of all the claims is hereby withdrawn.
2. Claims 1-12, 14-31, 33-39, 41-43 and 45-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferguson in view of Elston and Chum et al for the same reason set forth in paragraph 1 of paper no. 18.
3. In the response filed Nov. 16, 1999, applicant submitted two declarations in an attempt to overcome the rejection. The first declaration is a declaration under 37CFR 1.131 to overcome the date of the Chum et al reference. The declaration is not persuasive for the following reason. The Chum et al reference was used in the rejection for the teaching of homogeneously branched ethylene polymers. While the declaration shows reduction to practice prior to April 26, 1993 of the claimed patch, there is nothing in the declaration about using homogeneously branched ethylene polymers. All the polymers cited in the declaration are linear homogeneous ethylene/alpha-olefin copolymers. There is nothing on homogeneous branched polymers. Thus, it is not seen how the declaration is relevant in overcoming the date of the Chum et al reference.

With respect to the 132 declaration, it is not found to be persuasive. The declaration is not commensurate in scope with the claims and the teaching of the prior art. The declaration states a straight substitution of the Elston polymer for the LLDPE of Ferguson does not work. This is not in accordance with the Ferguson teaching because Ferguson teaches a blend LLDPE with other polymer. Thus, if one were to replace the LLDPE with the Elston polymer, one would also use a blend of polymers and not just the Elston polymer because Ferguson teaches to blend

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LLDPE with other polymers. Also, the declaration focuses on the 87%LLDPE; however, this is only one embodiment of the Ferguson teaching. Ferguson teaches a range of LLDPE from 80-100%. The declaration states that blending the homogenous resin with other polymers results in producing the heat shrinkable films. This does not show anything unexpected because Ferguson teach blending the polymers. It is just a question of substituting only polymer for another and the declaration has not shown that this can not be done. Also, the declaration is not commensurate with the scope of the claims because the declaration states that blending the homogenous resin in certain amount with an amount of other polymer results in successful patch. However, there is nothing in the independent claims about the amounts as cited in the declaration and about blending the homogenous polymer with other polymers. On page 6 of the declaration, it is stated that a flat cast process rather than the downward cast process of Ferguson is used thereby avoiding the melt strength issue. This statement seems to contradict the disclosure and the claims because there is claims to downward cast process and the specification discloses downward cast process. The affidavit seems to raise an enablement issue with respect to the claimed invention. For the above reasons, the declaration is not deemed sufficient to overcome the rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Wednesday-Friday from 6:30 to 4:00. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

October 20, 2000

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700